

Estate of:

Schedule

MP

Use this schedule only if death is on or after January 1, 1986 and the surviving spouse was legally married to the decedent on the date of death.

Under marital property law, there is a presumption that all assets of both the husband and the wife are marital property, including property titled in the surviving spouse's sole name.

Read the instructions before completing this declaration. Answer all the following questions and attach all appropriate documentation: (See instructions for DOCUMENTATION REQUIREMENTS)

- |  | YES                      | NO                       |
|--|--------------------------|--------------------------|
| 1. Are there any marital property agreements relating to the property of the decedent or the surviving spouse?               | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Are there any other agreements or contracts relating to the property of the decedent or the surviving spouse?             | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have the assets been classified in an inventory for any probate proceeding? If no, submit full details.                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Has a Summary Confirmation of an Interest in Property (HT-110) been filed with the Register of Deeds under s. 867.046(2)? | <input type="checkbox"/> | <input type="checkbox"/> |

Marital property creates specific rights for a surviving spouse in property not subject to administration which will not otherwise pass to the surviving spouse.

5. Has the surviving spouse established any spousal rights or marital property interests in any of the following:

	YES	NO
Insurance . . . . . Schedule D	<input type="checkbox"/>	<input type="checkbox"/>
Retirement benefits . . . . . Schedule I	<input type="checkbox"/>	<input type="checkbox"/>
Transfers in contemplation of death . . . . . Schedule G	<input type="checkbox"/>	<input type="checkbox"/>
Transfers to take effect at death . . . . . Schedule G	<input type="checkbox"/>	<input type="checkbox"/>
Transfers payable on death . . . . . Schedule G	<input type="checkbox"/>	<input type="checkbox"/>
Joint property . . . . . Schedules E1 and E2	<input type="checkbox"/>	<input type="checkbox"/>
Trusts . . . . . Schedules F and H	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify: _____)	<input type="checkbox"/>	<input type="checkbox"/>

Are all these determinations final? ☐ Yes ☐ No If no, please explain.

- |  |                          |                          |
|--|--------------------------|--------------------------|
| 6a. Is there property or other interests in property which is partially or totally titled in the name of the surviving spouse or managed and controlled by the surviving spouse that has not been included in this return? | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Does the surviving spouse have any other beneficial interest in property that has not been included in this return?   | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Were there any gifts made by the surviving spouse after January 1, 1986 to anyone other than the decedent?  | <input type="checkbox"/> | <input type="checkbox"/> |

If yes, detail the nature of the interest and explain why not included.

### DECLARATION OF SURVIVING SPOUSE

I DECLARE that I am the surviving spouse of the above named decedent, that I have answered all of the above questions to the best of my knowledge, that I have made a careful and diligent disclosure of all property owned by myself and the decedent and that all necessary documentation is included with the Wisconsin Inheritance Tax Return.

Signature of Surviving Spouse

Date

# MARITAL PROPERTY INSTRUCTIONS

## GENERAL INFORMATION

Wisconsin's marital property law became effective January 1, 1986. It applies to:

- Wisconsin residents who were married as of January 1, 1986.
- Wisconsin residents from the date of marriage if married after January 1, 1986.
- Married persons from the date they became Wisconsin residents after January 1, 1986.

Under the marital property law, there is a presumption that all assets of both the husband and wife are marital property. There is recognition that gifts and inheritances received from a third person can be individual property. Further, assets acquired prior to January 1, 1986, at least initially, are not classified as marital property. Any commingling of marital property with the assets, such as from present and future payments, or efforts of maintenance or improving the assets will produce mixed property which will be marital property unless components can be traced to establish otherwise.

**Title does not control the classification of property.** Therefore, the person preparing the inheritance tax return must make a careful classification of the property of both spouses in determining the decedent's property. In preparing the inventory for a probate proceeding, the personal representative must classify marital property and other property. The inventory can form the basis for preparing the inheritance tax return.

## CLASSIFICATION OF PROPERTY

### MARITAL PROPERTY

The marital property law presumes that all property of married persons is marital property, and that each spouse has equal ownership of the property, regardless of title.

### OTHER PROPERTY

#### Mixed Property

Mixed property is not a separate classification but is property that is, in part, marital property and, in part, property of some other classification. Under the marital property law, if mixing occurs, the property is reclassified as marital property unless it is possible to trace that portion that is not marital.

#### Deferred Marital Property

Deferred marital property is not a separate classification but is property that is owned by the decedent and which would have been marital property had it been acquired when the marital property law was in effect. In order for the surviving spouse to exercise these rights, an election must be made to take the appropriate share of the deferred marital property. The procedure for electing is made under s. 861.11, Stats., subject to the limitation of s. 861.13(b), Stats.

**NOTE:** The surviving spouse of a non-Wisconsin domiciliary has elective rights against Wisconsin real property under s. 861.20, Stats.

#### Individual Property

Individual property is property owned solely by a married person in which the surviving spouse has no marital interest. Usually it is property brought into the marriage, property received by gift or inheritance, or property designated as individual property by a marital property agreement. To maintain its individual status, it must be kept segregated and traceable.

## INHERITANCE TAX RETURN PREPARATION

Report on Schedules A through I, as appropriate, the decedent's interest in both marital and other property. For purposes of reporting, follow the instructions on each schedule. In addition, identify the nature of each item; i.e., marital, mixed, deferred marital, or individual property.

### Schedules A, B, C, F, G, and H

Report on these schedules the full fair market value of the asset in the "Description" column and carry over to the:

- "Marital Property" column - the decedent's interest in the marital property asset or the decedent's marital property component in the asset.
- "Other Property" column - the decedent's nonmarital interest in the asset.

### Schedules D and I

Report on these schedules the full amount paid or payable at death. Report in the "Spousal Rights" column the amount of any rights established by the surviving spouse. Report in the "Payable to Estate" or "Payable to Beneficiary" column the balance of the amount, and carry only these amounts to the appropriate lines on page 2, Form 101.

### Schedules E1 and E2

Report on these schedules the entire fair market value in either the "Survivorship Marital Property" column or the "Joint Property" column. Deduct on line 4 of Schedule E1, the surviving spouse's marital share or survivor's fractional share, as appropriate. Deduct on line 4 of Schedule E2, the surviving spouse's marital component or survivor's contribution, as appropriate.

### Schedules J and K

*Funeral Expenses - Schedule J, section a*

*Medical Expenses - Schedule K, section a, line 1*

These deductions are required to be paid by the personal representative out of the decedent's interest in probate marital property and other probate property on a prorated basis. Allocate these deductions between the "Marital Property" column and the "Other Property" column.

*Administration Expenses - Schedule J, section b*

*Cost of Terminating Joint Tenancy and Survivorship Marital Property - Schedule J, section c*

These deductions require a proration amongst all the decedent's interest in property under s. 857.04(1), Stats. Allocate these deductions between the "Marital Property" column and the "Other Property" column.

*Other Debts, Schedule K, section a*

Under s. 766.55(1), Stats., an obligation incurred by a spouse during marriage is presumed to be incurred in the interest of the marriage or the family. These debts are allowable to the extent of the decedent's fractional marital interest in the obligation, which is usually 50%. Report the full amount of the debt in the description column and carryover to the "Marital Property" column the decedent's share of the marital obligation. Under s. 859.13, Stats., a claimant classifies any claim filed against the estate under s. 766.55(2). To the extent of the decedent's obligation, these claims are generally allowable against the property subject to the claim. Allocate the allowable claims between the "Marital Property" column and the "Other Property" column.

*Mortgages and Liens Against Solely Owned Property - Schedule K, section b.*

*Mortgages and Liens Against Joint and Survivorship Marital Property - Schedule K, section c.*

Any mortgage or lien on any asset that is not fully included in the decedent's estate is a deduction in the same prorata share that the asset against which it applies is included for inheritance tax.

## DECLARATION OF SURVIVING SPOUSE

Answer all questions on the Marital Property Declaration. The Declaration must be signed and dated by the surviving spouse.

## DOCUMENTATION REQUIREMENTS

Submit with the Inheritance Tax Return copies of all marital property agreements and/or other agreements or contracts along with any other supporting documents which effect the classification of property or the distribution of the estate. If the surviving spouse has exercised any spousal rights, submit copies of any documents used to implement those rights.